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FACSIMILE TRANSMITTAL SHEET

TO	FROM:
ELIZABETH M. COLE	KENNETH A. KEELING
COMPANY:	DATE:
USPTO	9/2/2003
FAX NUMBER:	TOTAL NO. OF PAGES INCLUDING COVER:
703-872-9310	13
PHONE NUMBER:	SENDER'S REFERENCE NUMBER:
703-308-0037	SWH/AVK/P71830US
RE:	YOUR REFERENCE NUMBER:
REPLY TO OFFICE ACTION	09/980,383

URGENT	FOR REVIEW	PLEASE COMMENT	PLEASE REPLY	PLEASE RECYCLE
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☐ ORIGINAL WILL FOLLOWORIGINAL WILL NOT FOLLOW

Dear Examiner Cole,

Please find attached the following items:

- Transmittal Form - 1 page
- Fee Transmittal - 1 page
- Credit Card Payment Form - 1 page
- Amendment - 8 pages
- Petition for Extension of time - 1 page

Thank you.

Sincerely,


Kenneth A. Keeling

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PTO-2038 (02-2003)

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Payment Amount: \$ (US Dollars): 55.00

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Request and Payment Information

Description of Request and Payment Information:

PETITION FOR RESPONSE WITHIN FIRST MONTH

Patent Fee	Patent Maintenance Fee	Trademark Fee	Other Fee
Application No. 09/980,383	Application No.	Serial No.	IOON Customer No.
Patent No.	Patent No.	Registration No.	
Attorney Docket No. SWH/AVK/P71830US		Identify or Describe Mark	

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 09/980,383 Confirmation No. 1257
Applicant : John Alexander Gaskarth
Filed : November 30, 2001
TC/A.U. : 1771
Examiner : COLE, ELIZABETH M

Docket No : SWH/AVK/P71830US

Commissioner for Patents
Mail Stop Non-Fee Amendment
P.O. Box 1450
Alexandria, VA 22313-1450

AMENDMENT

Sir:

In response to the Office action of May 1, 2003, please amend the above-identified application as follows:

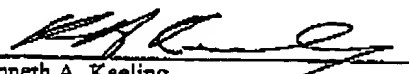
Amendments to the Claims are reflected in the listing of claims which begins on page 2 of this paper.

Remarks/Arguments begin on page 7 of this paper.

CERTIFICATION UNDER 37 C.F.R. 1.8(a)

I hereby certify that on the date shown below, this correspondence is being transmitted via facsimile to 703-872-9310.

8/2/03
Date


Kenneth A. Keeling
Registration No. 31,842

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Amtd. Dated September 2, 2003
Reply to Office action of May 1, 2003

AMENDMENTS TO THE CLAIMS

This listing of claims will replace all prior versions, and listings, of claims in the application:

Listing of Claims:

Claims 1-32 (cancelled)

Claim 33 (currently amended): A fluid transfer material for use in a system for transferring fluid, the fluid transfer material comprising an open, porous structure provided by:

at least one cured thermoset material, which is in a chopped, shredded or fragmented form; and

at least one thermoplastic material, which is in a chopped or shredded form, mixed with, and melded thereto, the thermoset material;

~~characterised in that there is sufficient thermoset material to create an open structure of the fluid transfer material.~~

Claim 34 (currently amended): A fluid transfer material according to claim ~~1-33~~, further comprising at least one fibrous material, ~~of which, together with the thermoset material, there is sufficient to create said open structure of the fluid transfer material wherein said thermoplastic material is mixed with and melded to said fibrous material.~~

Claim 35 (cancelled)

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Claim 36 (currently amended): A fluid transfer material according to claim ~~1~~33, wherein at least one said thermoset material comprises rubber.

Claim 37 (currently amended): A fluid transfer material according to claim ~~4~~36, wherein said rubber is from recycled tyres of motor vehicles.

Claim 38 (currently amended): A fluid transfer material according to claim ~~2~~34, wherein at least one said fibrous material is selected from the group ~~comprising~~ consisting of straw, wood and an inorganic material.

Claim 39 (currently amended): A fluid transfer material according to claim ~~1~~33, wherein at least one said thermoplastic material is recycled.

Claim 40 (cancelled)

Claim 41 (currently amended): A fluid transfer material according to claim ~~1~~33, wherein said fluid transfer material is at least partially surrounded by netting, preferably a fine mesh net.

Claim 42 (currently amended): A fluid transfer material according claim ~~1~~33 further comprising at least one selected from the group of mica and vermiculite.

Claim 43 (previously presented): A fluid transfer system comprising:
a conduit for carrying fluid; and

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a fluid transfer material according to any of the preceding claims, the fluid transfer material cooperating with said conduit for transferring fluid thereto and/or therefrom.

Claim 44 (currently amended): A fluid transfer system according to claim ~~11~~43, wherein said conduit is a gutter arranged in use below an elongate length of said fluid transfer material.

Claim 45 (currently amended): A fluid transfer system according to claim ~~11~~43, wherein said conduit is an elongate pipe having means for enabling passage of fluid between the interior and exterior thereof and said pipe being at least partially surrounded by an elongate length of said fluid transfer material.

Claim 46 (currently amended): A fluid transfer system according to claim ~~13~~45, wherein said means for enabling the passage of fluid between the interior and the exterior of the pipe comprises at least one aperture in the pipe.

Claim 47 (currently amended): A fluid transfer system according to claim ~~13~~45, wherein said means for enabling the passage of fluid between the interior and the exterior of the pipe comprises at least one slot arranged in the upper part of said pipe in use.

Claim 48 (currently amended): A fluid transfer system according to claim ~~13~~45, wherein said means for enabling the passage of fluid between the interior and the exterior of the pipe comprises said pipe being porous.

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Claim 49 (currently amended): A fluid transfer system according to ~~any one of claim 11-43~~, wherein said system is used for one selected from the group comprising drainage and irrigation.

Claim 50 (currently amended): A method of making a fluid transfer material comprising the steps of:-

mixing together chopped, shredded or fragmented components of at least one thermoset material, optionally at least one fibrous material, and chopped or shredded components of at least one thermoplastic material to form a mixture;

placing said mixture in a mould; and

heating said mixture so as to cause the melding of said at least one thermoplastic material to the other materials, ~~there being sufficient thermoset material, and fibrous material when present,~~ to create an open structure of the fluid transfer material.

Claim 51 (currently amended): A method according to claim ~~18-50~~, further comprising the step of preheating said mixture before it is placed in said mould.

Claim 52 (currently amended): A method according to claim ~~18-50~~, wherein said mixture is heated by the introduction of a heated gas into the mixture.

Claim 53 (previously presented): A fluid transfer material for use in a system for transferring fluid, the fluid transfer material comprising at least one fibrous material mixed with and melded to at least one thermoplastic material.

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Claim 54 (currently amended): A fluid transfer material according to claim ~~1~~33, wherein said material is formed by an extrusion process.

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REMARKS/ARGUMENTS

The applicant respectfully offers that the claims, as amended, are supported by the specification of the current application, which "contain[s] a written description of the invention ... in such full, clear, concise, and exact terms as to enable any person skilled in the art ... to make and use the same..."

Claim 33 has been amended to include the form of the thermoset material and thermoplastic material. The chopped, shredded or fragmented form of the thermoset material is supported by the specification at page 3, lines 5 -6. The chopped or shredded form of the thermoplastic material is supported by the specification at page 4, lines 21 - 22. These limitations were previously included in claims 35 and 40, now cancelled.

Applicant respectfully offers that the relative proportions of thermoset and thermoplastic resin is suggested by the specification and the drawings. The specification discloses that the thermoplastics must meld with the other materials (page 10, lines 10 - 11). Therefore, there must be enough thermoplastic relative to the other materials in the mixture that the thermoplastic will hold all of the materials together. Figures 6 and 8 are detailed schematic views of parts of the material of an embodiment of the invention. These figures show varying relative amounts of thermoset relative to thermoplastic resin. Applicant respectfully offers that based upon the disclosures in the specification and the drawings, that a person of ordinary skill in the art is able to determine the amount of thermoset and thermoplastic is necessary to practice the invention.

Applicant has amended the claims to overcome 35 U.S.C. § 112, second paragraph rejection. The claims should now claim a structure with openings for fluid flow and a method for making such a structure.

It is noted that when a homogenous material is heated, uniform melting will occur. When the amounts and types of material are varied, heating the mixture will result in lattice-like structure due to the differences in melting temperatures. By employing thermoset material mixed with thermoplastic material, heating the mixture will melt some material, while other material remains solid. Thus, when cooled, a rigid structure will remain with interstices through which fluid may travel.

Applicant respectfully requests reconsideration of the findings of obviousness in light of the prior art, particularly *Kallenberg*, with regards to claims 33-40 and 50-54. To establish a prima facie case of obviousness, [1] there must be some suggestion or motivation to modify the reference or combine the reference teachings; [2] there must be some reasonable expectation of success; and [3] the prior art must teach or suggest all the claim limitations. MPEP § 706.02(j). All three requirements must be met for a valid finding of obviousness. The applicant respectfully submits all of the requirements have not been met.

Kallenberg includes no reference to the inclusion of a thermoset material in his drainage mat. The process described in *Kallenberg* requires that the "material manufactured from plastic waste in this way is cleaned." (Abstract, line 7; Specification, page 1, line 25, English Translation). "Cleaned," in this context can only be understood as a reference to removal of

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contaminants, which thermoset components would certainly represent in waste thermoplastics material. Because *Kallenberg* is completely silent about the presence of thermoset inclusions in the waste plastics used and requires waste plastics to be clean, the applicant maintains that there is no suggestion of the specific requirement of the present invention that thermoset material be included in the composition of the invention.

Applicant respectfully requests reconsideration of the findings of obviousness over *Kallenberg* in light of *Maynes*. *Maynes* teaches a drainage material in which a net holds a plurality of spheres, creating voids through which fluid may pass.

Of the claims presented, only claim 41 teaches the use of a net to hold the fluid transfer material. However, neither *Maynes* nor *Kallenberg* teach the use of thermoset material in the fluid transfer material. Therefore, all of the claim limitations of applicant's invention are not taught or suggested by the prior art.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,



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(713) 680-8567 Fax

PTO/SB/22 (08-03)

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PETITION FOR EXTENSION OF TIME UNDER 37 CFR 1.136(a)		Docket Number (Optional) SWH/AVK/P71830US	
In re Application of John Alexander Gaskarth			
Application Number 09/980,383		Filed 11/30/2003	
For Material for Use in a Fluid Transfer System			
Art Unit 1771		Examiner COLE, ELIZABETH M.	

This is a request under the provisions of 37 CFR 1.136(a) to extend the period for filing a reply in the above identified application.

The requested extension and appropriate non-small-entity fee are as follows (check time period desired):

<input checked="" type="checkbox"/> One month (37 CFR 1.17(a)(1))	\$ <u>110.00</u>
<input type="checkbox"/> Two months (37 CFR 1.17(a)(2))	\$ _____
<input type="checkbox"/> Three months (37 CFR 1.17(a)(3))	\$ _____
<input type="checkbox"/> Four months (37 CFR 1.17(a)(4))	\$ _____
<input type="checkbox"/> Five months (37 CFR 1.17(a)(5))	\$ _____

☒ Applicant claims small entity status. See 37 CFR 1.27. Therefore, the fee amount shown above is reduced by one-half, and the resulting fee is: \$ 55.00.

☐ A check in the amount of the fee is enclosed.

☒ Payment by credit card. Form PTO-2038 is attached.

☐ The Director has already been authorized to charge fees in this application to a Deposit Account.

☒ The Director is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number 11-0307.

I have enclosed a duplicate copy of this sheet.

I am the ☐ applicant/inventor.

☐ assignee of record of the entire interest. See 37 CFR 3.71.
Statement under 37 CFR 3.73(b) is enclosed (Form PTO/SB/86).


☒ attorney or agent of record. Registration Number 31,842

☐ attorney or agent under 37 CFR 1.34(a).
Registration number if acting under 37 CFR 1.34(a) _____

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9/2/03
Date

713-680-1447
Telephone Number


Signature

Kenneth A. Keeling
Typed or printed name

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

☐ Total of _____ forms are submitted.

This collection of information is required by 37 CFR 1.136(a). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 6 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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